IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2006 Session

STATE OF TENNESSEE v. DONALD BRADFORD SLAGLE, JR.

Appeal from the Criminal Court for Loudon County
No. 10727 E. Eugene Eblen, Judge

No. E2005-02882-CCA-R3-CD - Filed September 27, 2006

Following a bench trial in the Loudon County Criminal Court, the Appellant, Donald Bradford Slagle, Jr., was convicted of the felony offense of driving under the influence (DUI), fourth offense, in addition to five other driving violations. As a result of his Class E felony conviction for DUI, Slagle received a one-year community corrections sentence with one hundred fifty days to be served in confinement. On appeal, Slagle argues that the evidence is insufficient to establish that he was "voluntarily" operating his vehicle when stopped by the arresting officer. After review, we conclude that the convicting evidence was legally sufficient. Accordingly, the judgment of conviction for fourth offense DUI is affirmed.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. MCLIN, JJ., joined.

Steven B. Ward, Madisonville, Tennessee, for the Appellant, Donald Bradford Slagle, Jr.

Paul G. Summers, Attorney General and Reporter; David Edward Coenen, Assistant Attorney General; J. Scott McCluen, District Attorney General; and Frank Harvey, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

Shortly after midnight on March 14, 2002, Sergeant Billy Hall of the Loudon County Sheriff's Department was on patrol on Highway 11 when he observed a pickup truck approaching with its high beam lights on. The truck passed Hall and failed to dim its headlights. Hall turned around and activated his blue lights in order to stop the vehicle. The truck, however, failed to stop, instead turning left onto Webb Drive. At this point, Hall activated his siren. The truck eventually

pulled over and stopped in a driveway on Webb Drive. According to Hall, the Appellant's vehicle traveled over one-half mile before the vehicle finally came to a stop.

Upon stopping, the Appellant exited the truck, and Sergeant Hall approached and asked for the Appellant's driver license, which the Appellant refused to produce. Hall stated that he smelled a strong odor of alcohol about the Appellant, that he was unsteady on his feet, and "appeared to be under the influence." Hall asked the Appellant to step to the rear of the truck and asked him how much he had had to drink. The Appellant informed Sergeant Hall, "I've had a couple of beers, and I'm taking medication." Hall stated that the Appellant was abrupt and verbally non-cooperative in responses to other questions. Hall requested that the Appellant perform field sobriety tests, but the Appellant refused. Upon looking inside the Appellant's truck, Hall observed a six-pack container, partially filled with beer. Hall once again asked the Appellant to perform field sobriety tests, and the Appellant again refused. At that point, the Appellant was arrested for DUI. After being placed in custody, the Appellant became very belligerent.

Upon his arrival at the jail, the implied consent form was read to the Appellant, but he refused to take the breathalyzer test. Sergeant Hall inventoried the Appellant's truck after he was transported to jail and recovered the partial six-pack of beer, postal scales, and some medicine bottles. Hall noted that the truck "smelled strongly of marijuana." At the jail, the Appellant became more combative, calling officers "Gestapo" and "queer[s]," and tried to engage them in a fight. Additionally, the Appellant refused to put on a jail jumpsuit. Eventually, the Appellant did remove his clothing, which he then threw at officers, but he still refused to put on the jumpsuit. Instead, he laid naked on the bench in the cell. Officers left the Appellant in the cell; however, shortly thereafter, they were called to the cell when the Appellant became noisy. He eventually urinated through the door of the cell and attempted to flush his jumpsuit down the toilet, which caused the cell to flood.

In August 2003, a Loudon County grand jury returned a nine-count indictment charging the Appellant with: (1) DUI; (2) driving on a revoked license; (3) violation of the implied consent law; (4) violation of the seatbelt law; (5) failure to dim headlights for oncoming traffic; (6) failure to show proof of insurance; (7) driving without a license; (8) 4th offense DUI; and (9) 4th offense driving on a revoked license. A bench trial was held on June 7, 2005, at which the Appellant testified in his own defense. He stated that he was taking Ambien, a brand name prescription drug used to treat insomnia, which caused him to do things he could not later remember. According to the Appellant, the last thing he remembered on March 13, 2002, was going to bed after taking his medication. The Appellant claimed that the next thing he remembered was "[w]aking up in a jail cell naked." He does not contest the testimony of Sergeant Hall with regard to his conduct before or after his arrest because the Appellant contends he is unable to recall his arrest. The Appellant's psychiatrist, Dr. Berta David, testified that she had prescribed the Appellant Ambien and that, although Ambien has few residual side effects, it has infrequently been known to produce memory problems or amnesia.

Following the presentation of the evidence, the trial court found the Appellant guilty as charged on all offenses. However, the court merged the conviction of driving without a license with the offense of driving on a revoked license. Following a sentencing hearing, the trial court sentenced the Appellant to one year in the community corrections program for the DUI offense, requiring service of one hundred and fifty days in confinement.

Analysis

On appeal, the Appellant raises the single issue of sufficiency of the evidence, specifically arguing that the evidence is insufficient because "there was no evidence that the [Appellant] voluntarily placed himself behind the wheel." In considering this issue, we apply the rule that where the sufficiency of the evidence is challenged, the relevant question for the reviewing court is "whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see also* Tenn. R. App. P. 13(e). Moreover, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). This court will not reweigh or reevaluate the evidence presented. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978).

The Appellant was convicted of DUI in violation of Tennessee Code Annotated section 55-10-401(a)(1) (2003), which provides that:

> It is unlawful for any person to drive or to be in physical control of any automobile . . . on any of the public roads and highways of the state, or on any streets or alleys, . . . while . . . : (1) [u]nder the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system[.]

Initially, we are constrained to note that the Appellant's brief in this case woefully fails to comply with the briefing requirements of this court. The Appellant's entire argument contained in his brief is as follows: "Appellant relies upon the argument contained in Case Number E2005-02884[-]CCA-R[3]-CD."[1] The Appellant's brief is inadequate because it does not include an argument, fails to cite to the appellate record, and fails to cite to authority supporting his argument. Accordingly, any issues presented on appeal are subject to waiver. *See* Tenn. R. Ct. Crim. App. 10(b) (stating issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.); Tenn. R. App. P. 27(a) (requiring that the brief of an appellant shall include an argument setting forth the contentions of the appellant with respect to the issues presented and include the reasons why the contentions require appellate

[1] This second appeal involves a DUI conviction which occurred approximately ninety days after this offense in which similar issues are raised.

relief, with citations to the authorities and appropriate references to the record). Nonetheless, in the interest of justice, we elect review of the Appellant's sufficiency argument.

On appeal, the Appellant asserts that after taking Ambien on the night in question, "he did not voluntarily leave the house." Moreover, he argues that "there was no evidence that [he] voluntarily placed himself behind the wheel" of his vehicle. In support of this legal argument at trial, the Appellant relied upon this court's opinion in *State v. Turner*, 953 S.W.2d 213, 216 (Tenn. Crim. App. 1996), which held, "A minimum requirement for culpability is the performance of a voluntary act." Thus, he argues that because the State has failed to establish that he voluntarily placed himself in control of the vehicle, the evidence is insufficient to support his conviction for driving under the influence. The Appellant argues that his conduct or act of driving is analogous to that of sleepwalking, over which he had no control.

Our criminal code recites the fundamental principle that no person may be convicted of a crime[2] unless there is proof of (1) conduct (or circumstances surrounding conduct or result of conduct) and (2) a culpable mental state, unless the offense plainly dispenses with a mental element. T.C.A. § 39-11-201(a)(1), (2) (2003); T.C.A. § 39-11-301(b) (2003). It is conceded that driving under the influence is a strict liability crime; therefore, no culpable mental state is required to obtain a conviction. *Turner*, 953 S.W.2d at 215-16. Moreover, the Appellant does not contest the fact that during the operation of his vehicle, he was under the influence of an intoxicant or narcotic drug. Accordingly, the Appellant argues, under the authority of *Turner*, that, at a minimum, the State was required to establish that the Appellant's conduct of driving the vehicle was a voluntary act. A voluntary act is a bodily movement performed consciously as a result of effort or determination. *Id.* at 216. The term "voluntary" focuses upon conduct that is within the control of the actor. MODEL PENAL CODE § 2.01 cmts. 1 & 2 (Official Draft and Revised Comments 1985).

The Appellant's argument obscures the distinction between a voluntary act and mental culpability, which is not required in this case. The distinction being that in order to establish the voluntary act, the proof requires only that the Appellant chose to drive and that this choice was the product of effort or determination, not that the Appellant intended to act unlawfully.

In support of the Appellant's argument that his driving was an involuntary act, the Appellant offers the testimony of Dr. Berta David. Dr. David testified that she treated the Appellant for depression, anxiety, and alcohol dependency. In the course of her treatment, she prescribed the drug Ambien for the Appellant's sleeping problems. Dr. David testified that an infrequent side effect of Ambien is amnesia, resulting in what she referred to as an "altered state of consciousness." However, she offered no medical opinion that, at the time of this offense, the Appellant had sustained memory loss based upon his use of Ambien. Moreover, Dr. David emphasized that the

---

[2] The provisions of Tennessee Code Annotated section 39-11-201apply to offenses defined by other laws unless otherwise provided by law. T.C.A. § 39-11-102(b) (2003).

We recognize those few exceptions which permit criminal liability to be imposed based upon the omission to perform an act.

Appellant was being treated for alcohol dependency and that patients must be very cautious drinking alcohol while taking a prescription drug such as Ambien, because mixing the two can be very dangerous and can cause serious problems such as blackout spells. She further noted that the Appellant was also on Paxil and Seroquel, both of which can also cause problems when mixed with alcohol. Additionally, she testified that alcoholics often have blackout spells. During these episodes, a person may do certain things but later have no memory of what they did.

First, the record in this case fails to support the Appellant's argument that his act of driving was not voluntary. Indeed, the record is void of any medical proof that his use of Ambien rendered his conduct involuntary. Although the Appellant contends his memory is now erased, he was able, at the time, to remember that he had drunk a couple of beers and had taken medication. The Appellant had a strong odor of alcohol about his person, and beer was found in his truck. It is obvious from these facts that the Appellant's impairment did not stem solely from the medication Ambien. Medical proof clearly illustrated the dangers of mixing alcohol and Ambien. Second, and more importantly, our law provides: "[t]he fact that any person or persons who drive while under the influence of narcotic drugs, or shall drive while under the influence of barbital drugs, is or has been entitled to use such drugs, under the laws of this state, shall not constitute a defense to the violation of §§ 55-10-401 – 55-10-404; T.C.A. § 55-10-402 (2003). Thus, if we were to accept the Appellant's argument that his driving was not voluntary because he chose to ingest a narcotic or barbital drug which produced a so-called altered state of consciousness, the result would be that the voluntary use of such drug would produce an absolute defense in all DUI prosecutions. We do not believe the General Assembly intended such a result in its codification of Tennessee Code Annotated section 55-10-402. Accordingly, we conclude that the proof is more than sufficient to establish that the Appellant was voluntarily driving his vehicle on a public roadway while under the influence of an intoxicant.

CONCLUSION

Based upon the foregoing reasons, the judgment of the Loudon County Criminal Court is affirmed.

_____

DAVID G. HAYES, JUDGE